

Statement of the Bay Mills Indian Community regarding its concerns over the proposed language of Senate Bill 1232, commonly referred to as the Michigan Indian Family Preservation Act.

Background

The Michigan Indian Family Preservation Act (MIFPA), is an effort to provide enhanced protections to Indian families in state court proceedings not otherwise provided by the Indian Child Welfare Act, 25 U.S.C. §1901 *et seq.* (ICWA). There has been inconsistency in the application of ICWA of 1978 by officials within the State of Michigan over the years and clarification and reinforcement of child custody proceedings involving guardianships, pre-adoptive placements and adoptive placements would be strengthened by this Act. Because of this need, the Bay Mills Indian Community supports the goal of the current proposed legislation—to ensure Indian people are adequately protected when they become involved in any family-related proceedings.

Concern

The application of this Act to proceedings already covered by the ICWA is tremendously problematic. As currently defined, this legislation will cause substantial confusion and uncertainty. As a federal law, ICWA is comprehensive in its regulation of proceedings involving Indian children. Conflicting State laws may therefore be deemed preempted as a matter of federal law. Accordingly, conclusions as to the standards by a court under MIFPA may still be subject to review as a violation of federal law under ICWA. There is no certainty here, only confusion and litigation about the preemptive effects of ICWA and federal case law on MIFPA.

Unfortunately, what began as an effort to target specific and particular areas of concern not addressed by ICWA to enhance the rights and protections of Indian families is, in its current state, unwieldy legislation. The effect of this proposed legislation as it is now presented to the Committee will result in unduly burdensome court proceedings, with courts confounded by conflicting and indefinite standards and processes. Such a result will tax court resources unnecessarily and dislodge from focus the fate of Indian families and children in favor of a uncertain process and unclear law.

Conclusion

The Bay Mills Indian Community and its representatives stand ready to offer any input and assistance in the form of workgroup participation, suggested amendments, or any other resources as requested to help Indian families in Michigan and guarantee that the goal of this worthy legislation is fully realized.